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CMS ADOPTS UPDATED LIFE SAFETY CODE STANDARDS

The Centers for Medicare & Medicaid Services ("CMS") published a final rule in the May 4, 2016 Federal Register, updating fire safety standards for certain types of facilities ("Final Rule"). In the Final Rule, CMS is adopting the 2012 edition of the Life Safety Code ("2012 LSC") with certain exceptions and other fire safety standards. The Final Rule and adoption of the 2012 LSC will impact the following health care facilities: hospitals; critical access hospitals ("CAHs"); long-term care facilities; Programs of All-Inclusive Care for the Elderly; religious non-medical health care institutions; hospice inpatient facilities; ambulatory surgical centers ("ASCs"); and intermediate care facilities for individuals with intellectual disabilities. CMS stated that it believes that "adopting the 2012 LSC would simplify and modernize the construction and renovation process for affected health care providers and suppliers, reduce compliance-related burdens, and allow for more resources to be used for patient care."

BACKGROUND

The 2012 LSC is issued by the National Fire Protection Association and sets out building standards for new and existing buildings. CMS has applied the 2000 edition of the LSC to facilities since 2003, but in the Final Rule, CMS has adopted an updated edition released in 2012. Because state and local agencies often utilize more recent versions as they become available, newer buildings are typically built to comply with newer versions of the LSC, so the Final Rule should bring CMS's standards in line with those agencies. The effective date for the Final Rule is July 5, 2016.

CMS states that all buildings that have not received all pre-construction governmental approvals before the Final Rule's effective date or those buildings that begin construction after the effective date will be required to meet the New Occupancy chapters of the 2012 LSC. Other buildings will be required to meet the Existing Occupancy chapters of the 2012 LSC and be subject to the new Building Rehabilitation chapter for any changes.

An organization's occupancy type establishes the standards that apply to the facility and the most relevant occupancy types for health care facilities are Health Care Occupancy, Ambulatory Health Care Occupancy, Residential Board and Care Occupancy and Business Occupancy. The 2012 LSC breaks down occupancy standards based on the types of services, the types of patients and, in some cases, the number of patients at the facility. For example, the LSC provides that Health Care Occupancy applies to facilities providing medical care or other treatment to four or more patients at the same time on an inpatient basis and such patients are mostly incapable of self-preservation.

In the proposed rule, CMS indicated that it would apply the Health Care Occupancy (the highest occupancy standard) to hospital facilities regardless of the number of patients they serve. CMS withdrew this proposal in the Final Rule, stating that a more stringent standard is not necessary for very small occupancies with fewer than four patients. CMS, however, is requiring ASCs and outpatient hospital surgical departments to meet the Ambulatory Health Care Occupancy standards regardless of the number of patients. Thus, the Final Rule would require four or more patients to trigger higher occupancy standards.

For hospitals, CMS explicitly recognized there can be multiple occupancy classifications within a single facility. This seems to indicate that a single inpatient that crosses a fire barrier into an outpatient department to receive limited care would not necessarily trigger the most stringent Health Care Occupancy standards for that area outside of the inpatient hospital space. It is important to note that provider-based facilities must comply with the hospital conditions of participation, which means that those facilities are also required to comply with the applicable portions of the 2012 LSC.

In addition to CMS's position on the occupancy standards, the Final Rule's changes for Health Care Occupancies include:

- Clarifying that the prohibition on roller latches applies only to doors to corridors and to rooms containing flammable or combustible materials;
- Revising the requirements for the shutdown of a sprinkler system for an extended period of time;
- Removing the requirement for installation of a dedicated air supply and exhaust system in windowless anesthetizing locations;

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- Revising the window sill requirement for new construction only to indicate that such sills must not be higher than 36 inches above the floor; and
- Adopting the 2012 LSC requirement that all existing high-rise buildings containing health care occupancies be protected throughout by an approved, supervised automatic sprinkler system within 12 years.

PRACTICAL TAKEAWAYS

1. Facilities are required to meet the applicable requirements of the 2012 LSC, except as outlined in the Final Rule. Facilities should review the Final Rule to assess the impact on its locations and proposed construction projects.
2. Many providers have been concerned the Final Rule would adopt CMS's proposal that would have applied the various occupancy requirements regardless of the number of patients served. The Final Rule clarifies that a specific occupancy type applies to a facility if it serves four or more patients.
3. Providers should monitor how state surveyors interpret and apply the Final Rule.
4. Hospitals should remember that provider-based locations (including off-campus locations) are also required to satisfy the applicable provisions of the 2012 LSC based on the type of services provided and the patients treated at the site.
5. All buildings that have not received all pre-construction governmental approvals before July 5, 2016 or those buildings that begin construction after that date will be required to meet the New Occupancy chapters of the 2012 LSC. Other buildings will be required to meet the Existing Occupancy chapters of the 2012 LSC and be subject to the new Building Rehabilitation chapter for any changes.

The Final Rule is available here. Watch for additional Hall Render articles on how the Final Rule may affect specific types of providers.

If you have any questions or would like additional information about this topic, please contact:

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